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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/276-284/17-RA / 452

Date of Issue: 02.02.2022

ORDER NO. 136-144 /2022-CX (SZ)/ASRA/MUMBAI DATED 03.02.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. Panvo Organics Pvt. Ltd.

Respondent: Commissioner of Central Excise, Chennai-I, Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 129 to 137/2017 (CXA-I)
dated 29.05.2017 passed by the Commissioner (Appeals-I), Central Excise,
Chennai.

ORDER

Nine Revision Applications under F. No.195/276-284/17-RA have been filed by the M/s. Panvo Organics Pvt. Ltd., No.61, S R Kandigai Road, Chinna Obulapuram Village, Gummidipoondi - 601 201 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. 129 to 137/2017 (CXA-I) dated 29.05.2017 passed by the Commissioner(Appeals-I), Central Excise, Chennai. The details of the Orders-in-Original are as under:-

S. No.	Order-in-Original No./Date	Period involved	Amount of Rebate involved
1	149/2016 (RF) dated 15.07.2016	June'14	Rs.3,01,269/-
2	150/2016 (RF) dated 15.07.2016	June'14	Rs.3,01,269/-
3	151/2016 (RF) dated 15.07.2016	May'14	Rs.2,99,495/-
4	152/2016 (RF) dated 15.07.2016	May'14	Rs.2,99,495/-
5	153/2016 (RF) dated 15.07.2016	May'14	Rs.3,03,296/-
6	154/2016 (RF) dated 15.07.2016	May'14	Rs.3,03,296/-
7	155/2016 (RF) dated 15.07.2016	Apr'14	Rs.3,06,713/-
8	156/2016 (RF) dated 15.07.2016	Apr'14	Rs.3,01,269/-
9	157/2016 (RF) dated 15.07.2016	Apr'14	Rs.3,01,269/-

2. Brief facts of the case are that the Applicant had filed rebate claims under Rule 18 of Central Excise Rules, 2002 for the duty paid on the export of finished goods namely 'L-Methylfolate Calcium' falling under chapter 29 of the Central Excise Tariff Act, 1985. Show Cause Notices were issued to the Applicant proposing to reject the rebate claims on the ground of being time-barred since they were filed beyond one year period of limitation as prescribed under Section 11B of the Central Excise Act, 1944. After due process of law, the Adjudicating Authority vide the impugned Orders, sanctioned the rebate claims holding that the no time limit has been prescribed for filing rebate claims under the relevant Notfn.No.19/2004-CE dated 06.09.2004. Aggrieved, the department filed an appeal which was allowed by the Commissioner (Appeals) while ordering recovery of amount of rebate sanctioned from the Applicant.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) The main ground on which the rebate was allowed by the Order-in-Original was that the insertion of the words "Before the expiry of the period specified in Section 11B" was brought in the scheme of rebate by Notification No. 18/2016 CE (NT) dated 1.3.2016 by amending the Notification No. 19/2004 CE(NT) dated 6.9.2004. (Ref: Para 15 of the OIO). It was thus very clear that PRIOR to the amendment, wef 1.3.2016, the prescription regarding limitation under Section 11B was ABSENT in the scheme of Rebate of duty in respect of goods exported.

(b) In the judgement of the Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd reported in 2015(320) ELT 45 (Mad.) wherein under similar facts and circumstances, it was held that in the absence of any prescription regarding time limit for claiming rebate, rejection of the application for refund as time-barred is unjustified. SLP and appeal filed by the department against the said judgement was dismissed by the Hon'ble Apex Court as reported in 2015(325) ELT A-104 (SC). The Hon'ble Madras High Court in the case of Dorcas (supra) has taken note of the judgement of the Supreme court in the case of Mafatlal (supra), while taking the view in favour of the assessee therein.

(c) The Commissioner (Appeals) failed to note that the Supreme Court while dismissing the departmental appeal noted that the Madras High Court in its impugned order had held that question of rebate of duty is governed separately by Section 12 of Central Excise Act, 1944 and the entitlement to rebate would arise only out of a notification under Section 12(1) *ibid*. It also held that Rule 18 of Central Excise Rules, 2002 is to be construed independently. Notification No. 19/2004-C.E., dated 6-9-2004 does not contain the prescription regarding limitation.

(d) The Commissioner (Appeals) failed to note the instruction issued by the Board vide F No. 276/114/2015-CX8A dated 09.2.2016 bringing out the effect of in limine dismissal of Special Leave Petition.

(e) In a bid to deny the benefit of export to the applicant, the Commissioner (Appeals) relied on the judgement of the High Court of Ahmedabad in case of Pacific Exports vs. UOI reported in 2017(346) ELT 240 (Guj.) wherein the said High Court differed with the judgement of the Hon'ble Madras High Court. But the Commissioner (Appeals) ought to have known that the judgement of the jurisdictional High Court is binding on the Commissioner (Appeals). Even otherwise, in that case the period involved was 2.11.2001 to 13.11.2001 whereas the subject matter of the present appeal is with reference to Notification No. 18/2016 dated 1.3.2016. Thus the reliance on the said judgement is totally misplaced.

(f) Commissioner (Appeals) gravely erred in placing reliance in the judgement in the case of Uttam Steel Ltd. reported in 2015(319) ELT 598, firstly because the facts and circumstances in that case and the present case are not pari materia. In that case the question which arose for determination was whether the enhanced period of limitation of one year by amending the provisions of law from 12.5.2000 was available in respect of rebate claim filed when the period of limitation was only six months and the Hon'ble Apex Court held that the enhanced period was not available. Secondly, in the cited case, Notification 18/2016 dated 1.3.2016 prescribing the period of one year was never the subject matter of the appeal. Hence reliance placed in the said case by the Commissioner was misplaced more particularly in view of the judgement of the Apex Court in the case of Dorcas Market Makers Pvt. Ltd, which is against the department.

(g) The Commissioner (Appeals) failed to note that the period involved in the present case is May 2014, that is much prior to the

insertion of period of limitation in the scheme itself. Further when prescription regarding limitation was not there in the Scheme itself, prior to 1.3.2016, the question of bringing in the limitation aspect in respect of claims pertaining to the period prior to 1.3.2016 does not arise as it does not stand to law or logic. The Central Govt. felt that the aspect of limitation should be brought in the scheme of Rebate itself. It was in this back ground that a conscious decision taken by the Central Government regarding bringing the limitation aspect into the scheme because itself it was felt that Rule 18 is to be construed independently in a fair and reasonable manner.

(h) The Commissioner (Appeals) failed to note that the purpose of various incentives/subsidies allowed to the exporters is that they should be able to compete in the international market and it is with this view that as a policy decision, the Central Govt. wanted all taxes and dues are neutralized for the purpose of cost calculation.

4. Personal hearing in the case was fixed for 10.11.2021. Shri Shanmugam Ganesan, Consultant attended the online hearing and submitted that time limit of one year under Section 11B of the Central Excise act, 1944 will not apply to Rebate as concerned Notification did not prescribe any time limit. He submitted that only Notification 18/2015-NT, dated 01.03.2015 prescribed time limit of one year, therefore time limit of one year should apply after 01.03.2015.

5. Government has carefully gone through the relevant case records available in case files, oral and written submissions and perused the impugned Orders-in-Original and Order-in-Appeal.

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of Central Excise Act, 1944.

7.1 The applicant has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 (hereinafter referred to as CEA), is not applicable to rebate claims as the notification issued under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as CER) did not make the provisions of Section 11B applicable thereto. In this regard, Government observes that this aspect has been deliberated in detail by the Appellate Authority in the impugned Order-in-Appeal (at para 7, 8 and 9):

7. Rule 18 of the Central Excise Rules, 2002 is extracted below:

RULE 18. Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation. - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

8. As seen from the above, onus has been placed on the specified notification to lay down conditions, limitations and procedure in order to avail the benefits available under the said Rule. In the case of rebate, the relevant notification is 19/2004-CE-NT dated 06.09.2004 which in fact, which does not contain any prescription regarding limitation. However, in the absence of such a provision it is trite law that one has to refer to the provisions contained in the relevant statutory Act or Rules, which in this case is undoubtedly Section 11B of CEA, 1944. The relevant portion of the same are extracted below:

Section 11B. Claim for refund of duty and interest, if any, paid on such duty . -

(1) Any person claiming refund of any ¹[duty of excise and interest, if any, paid on such duty] may make an application for refund of such ²[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of ¹[duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such ²[duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

.....
.....

Provided that the amount of ¹[duty of excise and interest, if any, paid on such duty] as determined by the Assistant Commissioner of Central Excise or

Deputy Commissioner of Central Excise under the foregoing provisions sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

.....
.....

Explanation. - *For the purposes of this section, -*

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

9. *From the above statutory provisions extracted supra, it is amply clear that refund under section 11B ibid also includes rebate and the relevant date for filing of rebate claims has also been specifically brought into the ambit of Section 11B, according to which such claim has to be filed within one year from the date of export. Hence there is no ambiguity on the time limit for filing an application for a rebate claim.*

7.2 Government further observes that Rule 18 of the CER, 2002 has been made by the Central Government in exercise of the powers vested in it under Section 37 of the CEA, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, Section 37 of the CEA, 1944 by virtue of its sub-section (2)(xvi) through the CER, 2002 specifically institutes Rule 18 thereof to grant rebate of duty paid on goods exported out of India. Notification No. 19/2004-CE(NT) dated 06.09.2004 and Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER, 2002 to set out the procedure to be

followed for grant of rebate of duty on export of goods. The applicants contention that the time limit has been done away as provision for filing of electronic declaration in Notification No 19/2004-CE dated 06.09.2004 does not stand to reason because the provisions of Section 11B making reference to rebate have not been done away with and continue to subsist.

7.3 Government observes that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA, 1944 has been agitated before the courts on several occasions. Both Notification No. 19/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods exported and Notification No. 21/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods used in the manufacture of export goods did not contain any reference to Section 11B of the CEA, 1944 till they were substituted in these notifications on 01.03.2016. The applicants contention that when the relevant notification does not prescribe any time limit, limitation cannot be read into it by an executive implementing the said notification or even by a court interpreting the same is precarious as there are recent judgments where the Honourable Courts have categorically held that limitation under Section 11B of the CEA, 1944 would be applicable to notifications granting rebate. The applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(Mad.)] although the same High Court has reaffirmed the applicability of Section 11B to rebate claims in its later judgment in Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance[2017(355)ELT 342(Mad.)] by relying upon the judgment of the Hon'ble Supreme Court in UOI vs. Uttam Steel Ltd.[2015(319)ELT 598(SC)]. Incidentally, the special leave to appeal against the judgment of the Hon'ble High Court of Madras in Dorcas Market Makers Pvt. Ltd. has been dismissed *in limine* by the Apex Court whereas the judgment in the case of Uttam Steel Ltd. is exhaustive and contains a detailed discussion explaining the reasons for arriving at the conclusions therein

7.4 Further, the observations of the Hon'ble High Court of Karnataka in the case of Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru [2020(371)ELT 29(Kar)] at para 13 of the judgment dated 22.11.2019 made after distinguishing the judgments in the case of Dorcas Market Makers Pvt. Ltd. and by following the judgment in the case of Hyundai Motors India Ltd. reiterate this position.

"13. The reference made by the Learned Counsel for the petitioners to the circular instructions issued by the Central Board of Excise and Customs, New Delhi, is of little assistance to the petitioners since there is no estoppel against a statute. It is well settled principle that the claim for rebate can be made only under section 11B and it is not open to the subordinate legislation to dispense with the requirements of Section 11B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11B is only clarificatory."

7.5 In a recent judgment in a matter relating to GST, the Hon'ble Gujarat High Court had occasion to deal with the powers that can be given effect through a delegated legislation in its judgment dated 23.01.2020 in the case of Mohit Minerals Pvt. Ltd. vs. UOI[2020(33)GSTL 321(Guj.)]. Para 151 of the said judgment is reproduced below.

"151. It is a settled principle of law that if a delegated legislation goes beyond the power conferred by the statute, such delegated legislation has to be declared ultra vires. The delegated legislation derives power from the parent statute and not without it. The delegated legislation is to supplant the statute and not to supplement it."

The inference that follows from the judgment of the Hon'ble High Court is that if the view of the applicant is presumed to be tenable, a notification which goes beyond the power conferred by the statute would have to be declared ultra vires. Any delegated legislation derives its power from the parent statute and cannot stand by itself. In the present case the Notification No. 19/2004-CE dated 06.09.2004 has been validly issued under Rule 18 of the CER, 2002 and the provisions of Section 11B of the CEA, 1944 have expressly been made applicable to the refund of rebate and therefore the notification cannot exceed the scope of the statute.

8. In view of the findings recorded above, Government upholds the impugned Orders-in-Appeal No. 129 to 137/2017 (CXA-I) dated 29.05.2017 passed by the Commissioner (Appeals-I), Central Excise, Chennai.

9. The impugned Revision Applications are disposed of on the above terms.

Shrawan
3/2/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 136-144 /2022-CX (SZ)/ASRA/Mumbai dated 03.02.2022

To,
M/s. Panvo Organics Pvt. Ltd.,
No.61, S R Kandigai Road,
Chinna Obulapuram Village,
Gummidipoondi - 601 201.

Copy to:

1. Commissioner of CGST,
Chennai Outer Commissionerate,
No.2054-I, II Avenue, 12th Main Road,
Newry Towers, Anna Nagar,
Chennai - 600 040.

2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.